HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Misc. Application No.71 of 2006

Vijay Gupta
S/o Sri G. P. Agarwal
R/o 61 Rishi Lok Colony
Rishikesh,
District Dehradun ……Applicant

Versus

1. State of Uttaranchal
2. Km. Shweta Agarwal
   D/o Sri Arun Kumar
   R/o 533 Hirala Marg
   Rishikesh, District Dehradun ……Respondents

Sri Vinod Sharma learned counsel for the applicant.
Sri A. Rab learned Addl. G.A.

Hon'ble J. C. S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the proceedings of case No.307/2005 Km. Shweta Agarwal Vs. Sri Vijay Gupta & others under section 138 Negotiable Instrument Act pending before the Special Judicial Magistrate, Rishikesh, District Dehradun.

2. Brief facts of the case are that the respondent No.2 filed a complaint before the Magistrate against the applicant and others with the allegations that Ram Gopal Agarwal, who is the owner of the firm i.e. Gurudev Savings & Financers, gave a cheque to the complainant and assured that the said amount would be available in the account within a week. It was assured that the rest of the amount will be paid within one week. When the complainant submitted the cheque before the bank on, the cheque was dishonoured by the bank due to insufficiency of funds. Thereafter, the complainant

served notice upon the applicant. On the said complaint, the learned Magistrate took cognizance against the applicant and others in case No.307/2005. Feeling aggrieved by this, the applicant preferred the present petition.

3. Learned counsel for the applicant contended that the service of the applicant has been terminated by the owners of the firm on 31.12.2004 vide letter dated 31.12.2004 and thereafter applicant had no concern with the act of the firm. It was further contended that the disputed cheque belongs to cheque book issued in the year 2004 and the cheque in question purported to have been was signed in the month of February 2005, whereas the service of the applicant has been terminated on 31.12.2004. Learned Addl. G.A. refuted the contention. The contention raised on behalf of the applicant is a subject matter of evidence. This plea can be raised by the applicant during trial. The trial court can only evaluate the evidence of the applicant. The respondent No.2 had adduced the evidence that the cheque, which was given by the applicant, had been bounced. Now, it is to be decided whether the version of the applicant is correct or the version of the respondent No.2 is correct. It is a question of fact, which has to be decided during the trial. This court cannot evaluate the disputed facts of the case. This Court cannot decide as to whether the evidence is reliable or not. It has been held by the Hon'ble Apex Court in **M. Narayandas Vs. State of Karnataka 2004 Cri.L.J. p/822** that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in

embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint an that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprise. It has also been held in **State of Karnataka Vs. M. Devendrappa & another 2002(2) SBR p/151** that while exercising jurisdiction under section 482 Cr.P.C., the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial court.

4. It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under section 482 Cr.P.C., it is not possible for this Court to act as if it a trial court. **{State of M.P. Vs. Awadh Kishore Gupta and others SCC (Cri) 2004 p/353}.**

5. In view of the above, the petition lacks merit and is dismissed.

(J.C. S. RAWAT, J.)

Dated 08.03.2006

LSR